

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CARNELL HUNNICUTT, SR.,

Plaintiff,

v.

No. CV 20-206 MV/CG

DANIEL PETERS, et al.,

Defendants.

ORDER QUASHING ORDER TO SHOW CAUSE

THIS MATTER is before the Court upon its *Order Denying Motion for Expedited Discovery and Directing Service*, in relevant part directing Plaintiff Carnell Hunnicutt, Sr. to show cause, (the “Order to Show Cause”), (Doc. 27), filed July 7, 2021; Mr. Hunnicutt’s notice to the Court of *Physical Addresses for the Remaining Defendants*, (Doc. 63), filed September 20, 2021; his *Affidavit in Support of Plaintiff’s Motion to Show Cause*, (Doc. 64), filed September 20, 2021; his *Memorandum of Law in Support of Order to Show Cause*, (Doc. 67), filed September 20, 2021; Defendant Summit Food Services’ *Response in Opposition to Plaintiff’s Memorandum of Law in Support of Order to Show Cause, Plaintiff’s Affidavit in Support of Plaintiff’s Motion to Show Cause and Plaintiff’s Objection to the Memorandum Opinion and Order*, (Doc. 70), filed September 29, 2021; and Mr. Hunnicutt’s *Reply to Defendant Summit Food Services Response in Opposition to Plaintiff’s Memorandum of Law in Support of Order to Show Cause, Plaintiff’s Affidavit in Support of Plaintiff’s Motion to Show Cause and Plaintiff’s Objection to the Memorandum Opinion and Order*, (Doc. 72), filed October 18, 2021. The Court, having considered the briefing and being informed of the relevant law, finds that its July 7, 2021 Order to Show Cause shall be **QUASHED**.

I. Factual and Procedural Background

Mr. Hunnicutt originally named fifteen defendants in his Complaint and Amended Complaint, including twelve individuals, but initially only provided a mailing address for the Southern New Mexico Correctional Facility (“SNMCF”). See (Doc. 1); (Doc. 3). On March 26, 2020, Mr. Hunnicutt provided mailing addresses for nine of the fourteen remaining defendants, and verified the mailing address provided for SNMCF. (Doc. 15). The addresses Mr. Hunnicutt provided for Defendants K.D. Miller, Jodi Upshaw, Joshua Sigala, Astrid Castillo, Ronald Martinez and SNMCF were a P.O. box address. *Id.*

On July 7, 2021, in its Order to Show Cause, the Court directed Mr. Hunnicutt either (1) to provide current physical addresses for the remaining nine defendants, (2) to renew his motion for pre-service discovery including a detailed affidavit and to show cause why his claims against the remaining defendants should not be dismissed, or (3) to elect not to prosecute his claims against the remaining defendants, by no later than August 9, 2021. (Doc. 27 at 5). On September 20, 2021, Mr. Hunnicutt provided the work address for Defendants K.D. Miller, Joshua Sigala, Astrid Castillo, and Warden Ronald Martinez. See (Doc. 63 at 1). He further indicated that he is unable to provide the addresses of Defendants Jodi Upshaw, Daniel Peters, William Edgman, Estevan Flores, Mary Williams, German Franco, Adam Whitefield and John Gay, given his inability to “access [] a computer.” *Id.*

To date, Mr. Hunnicutt has not provided current physical addresses for these Defendants. See (Doc. 63); (Doc. 64); (Doc. 67); (Doc. 72). Moreover, Mr. Hunnicutt, has not renewed his motion for pre-service discovery including a detailed affidavit, and has not elected to dismiss his claims against the remaining defendants. See *id.*

Rather, Mr. Hunnicutt has asked that his claims against the remaining Defendants not be dismissed. See (Doc. 63). Defendant Summit Food Services, in response, asks that the Court dismiss Defendant Astrid Castillo, a current employee of Summit Food Services, and Defendant Mary Williams, a former employee, from the case, for lack of service and as precluded from suit. (Doc. 70 at 4-5).

II. Analysis

Although “the onus [is] squarely on plaintiffs to track down the whereabouts of defendants to effectuate service—rather than obliging courts to assist in this endeavor—even when the plaintiffs are in prison[,]” *Washington v. Correia*, 546 F. App’x 786, 789 (10th Cir. Nov. 26, 2013) (unpublished), Mr. Hunnicutt has stated a satisfactory reason for his continued failure to serve the remaining Defendants.

In response to the Court’s Order to Show Cause, Mr. Hunnicutt alleges that he has no computer access, and that he has “requested a computer in the past for legal research, case law, etc.” (Doc. 63 at 1) (referencing Doc. 33 at 1, 3-16).¹ He also attaches several grievances he has previously brought on the subject. See (Doc. 63 at 1) (referencing Doc. 33 at 7-17). In the response to his grievance dated July 13, 2021, the prison stated, “Law Library does not provide computer access,” and attached a policy form indicating that “[t]he Department shall not make computers or typewriters available to inmates in the General Library for the purpose of enabling inmates to do legal work.” (Doc. 33 at 4-5). Mr. Hunnicutt also provided evidence of a prior grievance, filed in 2019, wherein he was informed of the policy. *Id.* at 10.

The Court finds Mr. Hunnicutt’s response to the Order to Show Cause to be

¹ This document is Mr. Hunnicutt’s *Objection to Order Denying Motion for Expedited Discovery and Directing Service*, which is currently before the presiding judge.

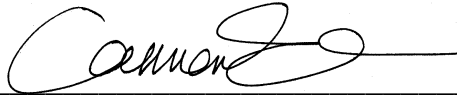
satisfactory, and finds that Mr. Hunnicutt has shown good cause why his claims against the remaining Defendants should not be dismissed. The Court will therefore quash the Order to Show Cause. The Court will further order Defendants to provide the Court with addresses for the remaining Defendants. See, e.g., *Chavez v. Correctional Medical Services, et al.*, 1:09-cv-1205 JCH/WPL (D.N.M. 2011) (ordering defendants to produce full names and last known addresses of the unserved defendants in order to save the time and expense of discovery); *Urioste v. Corizon and Centurion Health Care Providers, et al.*, 1:16-cv-755 JCH/KRS (D.N.M. 2020) (ordering prison to provide last known addresses of former employees).

IT IS THEREFORE ORDERED that the Court's *Order Denying Motion for Expedited Discovery and Directing Service*, (Doc. 27), is **QUASHED**.

IT IS FURTHER ORDERED that Defendants Summit Food Services, New Mexico Corrections Department, and Southern New Mexico Correctional Facility shall provide to the Court the full names and last known addresses of all unserved Defendants, including Defendants Daniel Peters, William Edgman, Estevan Flores, Jodi Upshaw, Mary Williams, German Franco, Adam Whitefield and John Gay, by **November 22, 2021**. This information shall be submitted to the Court by email: garzaschambers@nmd.uscourts.gov.

IT IS FINALLY ORDERED that the Clerk of the Court shall issue a Summons for Defendants K.D. Miller, Joshua Sigala, Astrid Castillo and Ronald Martinez. The United States Marshal shall serve a copy of the Summons and Complaint on these Defendants at their place of employment, at 1983 Joe R. Silva Blvd., Las Cruces, NM 88004, in accordance with Fed. R. Civ. P. 4(c)(3).

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Carmen E. Garza', with a horizontal line extending to the right.

THE HONORABLE CARMEN E. GARZA
CHIEF UNITED STATES MAGISTRATE JUDGE